

Todd M. Friedman (SBN 216752)  
Nicholas J. Bontrager (SBN 252114)  
LAW OFFICES OF TODD M. FRIEDMAN, P.C.  
369 S. Doheny Dr., #415  
Beverly Hills, CA 90211  
Phone: 877-206-4741  
Fax: 866-633-0228  
tfriedman@attorneysforconsumers.com  
nbontrager@attorneysforconsumers.com

L. Paul Mankin, IV (SBN 264038)  
Law Offices of L. Paul Mankin, IV  
8730 Wilshire Blvd, Suite 310  
Beverly Hills, CA 90211  
Phone: 800-219-3577  
Fax: 866-633-0228

***Attorneys for Plaintiff***

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

CLAUDETTE NEAL, on behalf of herself and ) Case No.  
all others similarly situated, )

Plaintiff, )

vs. )

FIRST NATIONAL COLLECTION )  
BUREAU, INC., )

Defendants. )

**CLASS ACTION**

**COMPLAINT FOR VIOLATIONS OF:**

1. NEGLIGENT VIOLATIONS OF  
THE TELEPHONE CONSUMER  
PROTECTION ACT [47 U.S.C.  
§227 ET SEQ.]
2. WILLFUL VIOLATIONS OF  
THE TELEPHONE CONSUMER  
PROTECTION ACT [47 U.S.C.  
§227 ET SEQ.]

**DEMAND FOR JURY TRIAL**

Plaintiff Claudette Neal ("Plaintiff"), on behalf of herself and all others similarly  
situated, alleges the following upon information and belief based upon personal knowledge:

2. This Court has federal question jurisdiction because this case arises out of violations of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012).

3. Venue is proper in the United States District Court for the Southern District of California pursuant to *18 U.S.C. 1391(b)* and *18 U.S.C. § 1441(a)* because Defendant does business within the state of California and Plaintiff resides within the Eastern District of California.

4. Plaintiff, Claudette Neal (“Plaintiff”), is a natural person residing in Carmichael, California and is a “person” as defined by *47 U.S.C. § 153 (10)*.

5. Defendant, First National Collection Bureau, Inc. (“Defendant”), is a leader in consumer debt buying and recovery/collection and is a “person” as defined by 47 U.S.C. § 153 (10).

6. Beginning in or around November or December of 2012, Defendant contacted Plaintiff on her cellular telephone ending in 9310, in an attempt to collect an alleged outstanding debt owed for personal telephone/cable utility services.

7. Defendant placed multiple calls a day, often upwards of two (2) to three (3) calls in a single day, on a virtual daily basis to Plaintiff's cellular telephone seeking to collect

1 the alleged debt owed. Defendant placed these calls from its telephone number (714) 495-  
2 4808.

3 8. Defendant used an “automatic telephone dialing system”, as defined by 47  
4 *U.S.C. § 227(a)(1)* to place its daily calls to Plaintiff seeking to collect the debt allegedly owed.

5 9. When Plaintiff would answer Defendant’s calls to her cellular telephone she  
6 would be routinely greeted with a pre-recorded notification advising Plaintiff to continue to  
7 hold on the line until one of Defendant’s representatives could be available. By way of such  
8 pre-recorded greetings, Defendant utilized an “artificial or prerecorded voice” as prohibited by  
9 47 *U.S.C. § 227(b)(1)(A)*.

10 10. Furthermore, Plaintiff repeatedly demanded that Defendant cease placing such  
11 collection calls to her cellular telephone. Despite this, Defendant continued to call Plaintiff’s  
12 cellular telephone via the “automatic telephone dialing system.”

13 11. Defendant’s calls constituted calls that were not for emergency purposes as  
14 defined by 47 *U.S.C. § 227(b)(1)(A)*.

15 12. Defendant’s calls were placed to telephone number assigned to a cellular  
16 telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 *U.S.C. §*  
17 *227(b)(1)*.

18 13. Plaintiff did not own the cellular telephone number ending in 9310 at the time  
19 the alleged debt was incurred and never provided said cellular telephone number to the creditor  
20 of the alleged debt. As such, Plaintiff is informed, believes and thereon alleges that Defendant  
21 obtained Defendant’s cellular telephone number via “skiptracing.”

22 14. Plaintiff has never provided any personal information, including her cellular  
23 telephone number, to Defendant for any purpose whatsoever. Furthermore, Plaintiff did not  
24 possess her current cellular telephone number at the time in which the alleged debt was  
25 incurred. Accordingly, Defendant never received Plaintiff’s “prior express consent” to receive  
26 calls using an automatic telephone dialing system or an artificial or prerecorded voice on her  
27 cellular telephone pursuant to 47 *U.S.C. § 227(b)(1)(A)*.

**CLASS ALLEGATIONS**

15. Plaintiff brings this action on behalf of herself and all others similarly situated, as a member of the proposed class (hereafter “The Class”) defined as follows:

All persons within the United States who received any telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

16. Plaintiff represents, and is a member of, The Class, consisting of All persons within the United States who received any telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously not provided their cellular telephone number to Defendant within the four years prior to the filing of this Complaint.

17. Defendant, its employees and agents are excluded from The Class. Plaintiff does not know the number of members in The Class, but believes the Class members number in the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in the expeditious litigation of the matter.

18. The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of The Class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believes and thereon alleges that The Class includes thousands of members. Plaintiff alleges that The Class members may be ascertained by the records maintained by Defendant.

19. Plaintiff and members of The Class were harmed by the acts of Defendant in at least the following ways: Defendant illegally contacted Plaintiff and Class members via their cellular telephones thereby causing Plaintiff and Class members to incur certain charges or reduced telephone time for which Plaintiff and Class members had previously paid by having to retrieve or administer messages left by Defendant during those illegal calls, and invading the

1 privacy of said Plaintiff and Class members.

2       20. Common questions of fact and law exist as to all members of The Class which  
3 predominate over any questions affecting only individual members of The Class. These  
4 common legal and factual questions, which do not vary between Class members, and which  
5 may be determined without reference to the individual circumstances of any Class members,  
6 include, but are not limited to, the following:

- 7           a. Whether, within the four years prior to the filing of this Complaint,  
8 Defendant made any call (other than a call made for emergency purposes  
9 or made with the prior express consent of the called party) to a Class  
10 member using any automatic telephone dialing system or any artificial or  
11 prerecorded voice to any telephone number assigned to a cellular  
12 telephone service;
- 13           b. Whether Plaintiff and the Class members were damages thereby, and the  
14 extent of damages for such violation; and
- 15           c. Whether Defendant should be enjoined from engaging in such conduct in  
16 the future.

17       21. As a person that received numerous calls from Defendant using an automatic  
18 telephone dialing system or an artificial or prerecorded voice, without Plaintiff's prior express  
19 consent, Plaintiff is asserting claims that are typical of The Class.

20       22. Plaintiff will fairly and adequately protect the interests of the members of The  
21 Class. Plaintiff has retained attorneys experienced in the prosecution of class actions.

22       23. A class action is superior to other available methods of fair and efficient  
23 adjudication of this controversy, since individual litigation of the claims of all Class members  
24 is impracticable. Even if every Class member could afford individual litigation, the court  
25 system could not. It would be unduly burdensome to the courts in which individual litigation  
26 of numerous issues would proceed. Individualized litigation would also present the potential  
27 for varying, inconsistent, or contradictory judgments and would magnify the delay and expense  
28 to all parties and to the court system resulting from multiple trials of the same complex factual

1 issues. By contrast, the conduct of this action as a class action presents fewer management  
 2 difficulties, conserves the resources of the parties and of the court system, and protects the  
 3 rights of each Class member.

4 24. The prosecution of separate actions by individual Class members would create a  
 5 risk of adjudications with respect to them that would, as a practical matter, be dispositive of the  
 6 interests of the other Class members not parties to such adjudications or that would  
 7 substantially impair or impede the ability of such non-party Class members to protect their  
 8 interests.

9 25. Defendant has acted or refused to act in respects generally applicable to The  
 10 Class, thereby making appropriate final and injunctive relief with regard to the members of the  
 11 California Class as a whole.

## 12 **FIRST CAUSE OF ACTION**

### 13 **Negligent Violations of the Telephone Consumer Protection Act**

#### 14 **47 U.S.C. §227 et seq.**

15 26. Plaintiff repeats and incorporates by reference into this cause of action the  
 16 allegations set forth above at Paragraphs 1-25.

17 27. The foregoing acts and omissions of Defendant constitute numerous and  
 18 multiple negligent violations of the TCPA, including but not limited to each and every one of  
 19 the above cited provisions of *47 U.S.C. § 227 et seq.*

20 28. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et seq.*,  
 21 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for  
 22 each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

23 29. Plaintiff and the Class members are also entitled to and seek injunctive relief  
 24 prohibiting such conduct in the future.

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**SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227 et seq.**

30. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-29.

31. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 *et seq.*

32. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

33. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

**FIRST CAUSE OF ACTION**

**Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227 et seq.**

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

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**SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227 et seq.**

- As a result of Defendant's willful and/or knowing violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to *47 U.S.C. §227(b)(3)(B)* and *47 U.S.C. §227(b)(3)(C)*.
- Any and all other relief that the Court deems just and proper.

Respectfully Submitted this 17th day of June, 2013.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman  
Todd M. Friedman  
Law Offices of Todd M. Friedman  
Attorney for Plaintiff